

District 2, Marine Engineers Beneficial Association—Associated Maritime Officers, AFL-CIO and Grand Bassa Tankers, Inc. Case 29-CE-52

April 27, 1982

DECISION AND ORDER

**BY MEMBERS FANNING, JENKINS, AND
ZIMMERMAN**

On September 14, 1981, Administrative Law Judge Howard Edelman issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief; the Charging Party, Grand Bassa Tankers, Inc., filed a letter in reply thereto; and the General Counsel filed an answering brief.¹

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, District 2, Marine Engineers Beneficial Association—Associated Maritime Officers, AFL-CIO, Brooklyn, New York, its officers, agents, and representatives, shall take the action set forth in the said recommended Order, except that the attached notice is substituted for that of the Administrative Law Judge.

¹ Respondent's request for oral argument is hereby denied as the record adequately sets forth the positions of the parties.

APPENDIX

**NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government**

WE WILL cease and desist from entering into, enforcing, or giving effect to the agreement executed on January 5, and on June 13, 1979, which provides *inter alia* that: International Ocean Transport Corporation agrees with us that any operator employed by it to

operate its U.S. flagships shall have a labor agreement with us until June 15, 1981.

**DISTRICT 2, MARINE ENGINEERS
BENEFICIAL ASSOCIATION—ASSOCIATED
MARITIME OFFICERS, AFL-CIO**

DECISION

STATEMENT OF THE CASE

HOWARD EDELMAN, Administrative Law Judge: This case was heard before me on April 20 and 21, 1981, in Brooklyn, New York.

On August 12, 1980, an unfair labor practice charge was filed by Grand Bassa Tankers, Inc., herein called Grand Bassa or the Charging Party, against District 2, Marine Engineers Beneficial Association—Associated Maritime Officers, AFL-CIO, herein called Respondent, alleging a violation of Section 8(e) of the Act. On March 20, 1981, a complaint was issued alleging, *inter alia*, that Respondent violated Section 8(e) of the Act by entering into an agreement restricting International Ocean Transport Corporation, herein called IOTC (who was subsequently named Grand Bassa Tankers, Inc.), from employing an operator of its vessels other than one which maintains a collective-bargaining agreement with Respondent, and by subsequently seeking to enforce the above-described agreement by threatening to institute, and by instituting, a legal action to compel specific performance of said agreement.

All parties were represented at the hearing and were accorded full opportunity to be heard, to introduce relevant evidence, to present oral argument, and to file briefs. Briefs were filed by General Counsel, by counsel for the Charging Party, and by counsel for Respondent. Upon consideration of the entire record and the briefs, and from my observation of the demeanor of the witnesses, I make the following:

FINDINGS OF FACT

1. THE BUSINESS OF THE EMPLOYER

Grand Bassa is, and has been at all times material herein, a corporation duly organized under and existing by virtue of the laws of the State of Delaware. At all times material herein, Grand Bassa has maintained its principal office and place of business in Tulsa, Oklahoma, where it has, at all times material herein, been an owner of oceangoing vessels and has been engaged in the operation and charter of such vessels for the purpose of transporting petroleum and petroleum products worldwide.

Grand Bassa annually, in the course and conduct of its operations described above, derives gross revenues in excess of \$50,000, of which in excess of \$50,000 is derived from the charter of its oceangoing vessels for the purpose of transporting petroleum and petroleum products worldwide.

Respondent admits, and I find, that Grand Bassa is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

Respondent admits, and I find, that Respondent is a labor organization within the meaning of Section 2(5) of the Act.

II. CORPORATE RELATIONSHIPS

Prior to July 1, 1974, Cities Service Company owned and operated U.S. flag vessels through a subsidiary, Cities Service Tankers Corporation. Cities Service Tankers Corporation in turn maintained a wholly owned subsidiary called Grand Bassa Tankers, Inc., which owned and operated foreign flagships. In and about mid-1974, Cities Service Tankers Corporation and its subsidiary, Grand Bassa Tankers, Inc., merged with a separate and independently owned corporation called Interstate Oil Transport, which was owned and controlled by the Hooper family. An entirely new entity called IOT Corp. was established as a result of the merger of the Cities Service interests with the Hooper interests.

Pursuant to the terms of the merger, Cities Service Company and the Hooper interests each retained a 50-percent ownership interest in the newly created IOT Corp. operation. At the same time Cities Service Tankers Corporation, now a wholly owned subsidiary of IOT Corp., adopted the name International Ocean Transport Corporation, herein called IOTC. IOTC owned and operated oceangoing vessels formerly owned and operated by Cities Service Company prior to the merger.

In January 1976, IOT Corp. created a new subsidiary, called Inter Ocean Management Corporation, herein called IOMC, for the purpose of operating ships owned by IOTC, as well as by other outside independent corporations. Prior to the creation of IOMC, IOTC both owned and operated its oceangoing vessels. As a result of the creation of IOMC, IOTC was divested of vessel management responsibilities. A written agreement was subsequently executed between IOMC and IOTC which set forth the terms under which IOMC would operate IOTC vessels. This agreement was entered into in 1976 and was subsequently amended several times.¹

From January 1, 1976, until August 15, 1980, pursuant to the agreement between IOTC and IOMC, described above, IOMC handled all matters with respect to the operation of IOTC vessels, including, *inter alia*, hiring of crewmembers, work assignments, discipline, work evaluation, and adjustment of grievances. IOMC had sole responsibility for the negotiation and administration of any collective-bargaining agreement with Respondent, which represented the licensed deck and engineer officers on board IOTC's vessels.

Additionally, IOMC was required to maintain certain standards, which included maintaining the vessels owned by IOTC according to American Bureau of Shipping Standards criteria, keeping records according to established accounting procedures, and purchasing workmen's compensation insurance. In consideration of the foregoing responsibilities IOMC received an annual fee from

¹ The amendments are not material to a decision in this case and are not set forth herein.

IOTC paid in 12 monthly installments. IOTC representatives maintained an almost ongoing daily contact with IOMC with respect to various facets of the vessels' operations, including vessel repair. IOTC derived all revenues from operation of its vessels by IOMC and was ultimately responsible for all expenses connected with the vessels.

Prior to the creation of IOMC on January 2, 1976, the licensed deck and engineer officers aboard IOTC-owned vessels were represented by the Deep Water Officers Association, a labor organization not affiliated with Respondent. It was anticipated that, upon the creation of IOMC, Respondent, which represented the licensed deck and engineer officers on other Hooper vessels, would thereafter assume representation of the licensed deck and engineer officers aboard the IOTC vessels then represented by the Deep Water Officers Association. In contemplation of this representation, IOTC sent a letter² offering the licensed deck and engineer officers aboard their ships employment following the creation of IOMC at the same wages and without a loss of benefits or a break in service.

At all times since January 1, 1976, Respondent, through a series of collective-bargaining agreements negotiated with IOMC, has represented all licensed deck and engineer officers aboard IOTC-owned vessels. The last agreement was entered into on June 16, 1978, and was effective until June 15, 1981. The agreements were negotiated by Respondent and IOMC representatives. IOTC representatives took no part in these negotiations.

Sometime prior to December 1978, it became apparent to Cities Service and the Hooper interests that the merger was not a satisfactory arrangement.

On or about December 1, 1978, a corporate decision between the Hooper interests and Cities Service Company was affected. Pursuant to the terms of this decision, Cities Service acquired the entire stock of both IOTC and its then subsidiary, Grand Bassa, and the Hooper interests retained 100 percent of IOT Corp., which owned 100 percent of the stock of IOMC. As a result of this corporate recision there was no further common ownership interests nor common officers between IOTC and IOMC. IOTC returned to the Cities Service ownership and IOMC returned to the Hooper interests ownership.

Following the recision described above, IOMC continued to operate the IOTC vessels pursuant to their agreement described above. However, it was agreed that as of December 1, 1978, the operating agreement between IOTC and IOMC could be terminated upon 60 days' notice by either party.

Subsequently on June 1, 1979, IOTC merged into Grand Bassa and was thereafter called Grand Bassa.

III. THE 8(E) AGREEMENT

As of December 1, 1978, the date of the corporate recision between the Hooper interests and Cities Service, IOTC owned six U.S. flagships. Sometime in October 1978, several months prior to the corporate recision de-

² The letter is undated but was apparently sent to all licensed deck and engineer officers aboard IOTC-owned ships.

scribed above, IOTC reached an agreement with an outside corporation, Sabine Towing and Transportation Company, a nonunion owner and operator of oceangoing vessels, whereby IOTC agreed to sell to Sabine the SS *Fort Hoskins*, one of its U.S. flagships. Following this agreement with Sabine, IOTC representatives notified IOMC's president, George Steele, of the impending sale. Steele contacted IOTC's vice president, James Gillespie, and urged him to meet with Steele and Respondent's officials because in Steele's view he felt the sale of the SS *Fort Hoskins* would precipitate labor problems for IOMC as to all vessels IOMC was then operating for IOTC. Gillespie agreed to meet with Steele and Respondent's officials. Thereafter, a series of three meetings were held on November 2 and December 14, 1978, and January 5, 1979. Present at these meetings were officials of Respondent and of the Seafarers' International Union, which represented other unit employees on board IOTC vessels, IOMC officials, and IOTC officials. These officials included Jerome Joseph, vice president of Respondent, Frank Drozak of the Seafarers' Union, James Gillespie, IOTC vice president, and George Steele, IOMC president.

Throughout these meetings, IOTC took the position that it had an obligation pursuant to its operating agreement with IOMC to reimburse IOMC for any liability incurred pursuant to the provisions of their collective-bargaining agreement with Respondent resulting from the sale of the SS *Fort Hoskins*. IOTC maintained the position that it had no direct obligation to Respondent or to the Seafarers' Union. During these meetings, officials from Respondent raised issues relating to IOTC's reimbursement of IOMC for severance pay for the SS *Fort Hoskins* crewmembers. They also pressed for their continued jurisdiction over ships owned by IOTC following the impending corporate recision. In this connection, Respondent encouraged IOTC either to retain IOMC or to utilize another operator which had a collective-bargaining agreement with Respondent.

During the second meeting, held on December 14, 1978, the sale of the SS *Fort Hoskins* had been consummated. Respondent agreed to forgo its severance claim against IOMC resulting from the discharge of the SS *Fort Hoskins* crewmembers, for which IOTC was ultimately liable, if IOTC would agree to continue to utilize IOMC or to utilize another Respondent operator to operate IOTC-owned vessels.

During the third meeting, which took place on January 5, 1979, IOTC and Respondent entered into a written agreement which was designed to resolve the impasse over job security for Respondent's members and the severance pay owed to Respondent as a result of the sale of the SS *Fort Hoskins*. This agreement, executed on January 5, 1979, by Raymond McKay, president of Respondent, and James Gillespie, vice president of IOTC, provided, *inter alia*, that:

International Ocean Transport Corporation [IOTC] agrees with District 2, MEBA-AMO [Respondent] that any operator employed by it to operate its U.S.

flag ships shall have labor agreements with District 2, MEBA-AMO until June 15, 1981.³

The agreement further provided for appropriate severance payment to Respondent's fund.

On January 23, 1979, IOTC and Respondent executed a second agreement reaffirming the January 5 agreement in all respects.

On June 1, 1979, as set forth above, IOTC changed its name to Grand Bassa. On or about June 10, 1979, upon learning the change of name, Joseph, Respondent's vice president, telephoned Gillespie, IOTC's vice president, to confirm the change of name. In addition, Joseph wanted assurances that Grand Bassa would assume the obligations of the January 5, 1979, agreement between Respondent and IOTC, described above. Gillespie stated there would be no problem. Joseph then sent to Gillespie a letter dated June 13, 1979, which provided in pertinent part that the January 5 agreement, affirmed on January 23, "shall be considered as though they were signed by Grand Bassa Tankers, Inc." When Gillespie received this letter, he signed a copy thereof and returned it to Joseph.

Thereafter, IOMC continued to operate and manage Grand Bassa's U.S. flagship pursuant to the terms of the operation agreement between IOMC and IOTC.

In late July or August 1980, for economic reasons, Grand Bassa decided to replace IOMC with Trinidad Corporation, an operator which does not have a contract with, or employ members of, Respondent. On August 8, 1980, Gillespie, vice president of Grand Bassa, dispatched a telex to IOMC notifying IOMC that, upon the discharge of the current crews of the SS *Banner* and SS *Aligence*, U.S. vessels owned by Grand Bassa and operated by IOMC, it was terminating and otherwise withdrawing the SS *Banner* and SS *Aligence* from coverage under the Grand Bassa-IOMC operating agreement. IOMC notified Respondent immediately of this decision by Grand Bassa.

On August 11, 1980, pursuant to the notification of the change in operators, Respondent, by McKay, its president, dispatched the following telex to Gillespie, vice president of Grand Bassa:

District 2, Marine Engineers Beneficial Association, Associated Maritime Officers, AFL-CIO . . . has been advised that Grand Bassa Tankers, Inc. has, effective on or about August 15, 1980, withdrawn the vessels, *Banner* and *Aligence* from coverage under an existing management agreement with Inter Ocean Management Corporation.

Consistent with the requirements in our agreement of January 5, 1979, as reconfirmed by our agreements of January 25, 1979 and June 13, 1979, please advise immediately as to the District 2, MEBA-AMO, AFL-CIO contracted operators to be employed by Grand Bassa Tankers, Inc. to operate those vessels.

³ The current collective-bargaining agreement between Respondent and IOMC expired on June 15, 1981.

Failure to respond within 24 hours of your receipt of this telex will be deemed to constitute a breach of our agreements as described above and appropriate legal action will be instituted.

Grand Bassa did not respond to this communication. Thereafter, Joel Glanstein, counsel for Respondent, dispatched a telex to the offices of Proskauer, Rose, Goetz & Mendelsohn, which provided as follows:

This will confirm my telephone conversation with your office on this date, August 13, 1980 at 2:00 p.m., where I advised your office that I would be applying for a temporary restraining order against your client, Grand Bassa Tankers, Inc. . . . on behalf of District 2, Marine Engineers Beneficial Association - Associated Maritime Officers, AFL-CIO for an order:

(A) Restraining defendant Grand Bassa Tankers, Inc. from withdrawing the tanker vessels, *Aligence* and *Banner* from operation under a District 2, Marine Engineers Beneficial Association - Associated Maritime Officers, AFL-CIO collective-bargaining agreement for June 16, 1981, and

(B) Ordering and directing defendant Grand Bassa Tankers, Inc. to specifically perform its agreement of January 5, 1979 with District 2, Marine Engineers Beneficial Association - Associated Maritime Officers, AFL-CIO through June 15, 1981 and for such other and further relief as to the courts seems just and proper.

Immediately thereafter, Respondent applied for a temporary restraining order in the U.S. District Court for the Eastern District of New York to, *inter alia*, order and direct Grand Bassa to specifically perform its agreement of January 5, 1979. The court denied the temporary restraining order on the ground that it lacked jurisdiction over the subject matter. That action has been appealed to the Second Circuit and is presently pending therein.

In its verified complaint prepared in connection with the above-described U.S. district court proceeding, Respondent's vice president, Joseph, alleged:

17. Unless a Temporary Restraining Order and Preliminary Injunction are issued [Respondent] and its members will suffer substantial and irreparable injury since the number of jobs available to these members in the District 2, MEBA-AMO Deep Sea employment pool will be permanently reduced as these jobs are prematurely eliminated. . . .

22. If [Grand Bassa] is allowed to withdraw operation of its tanker vessels . . . from a District 2, MEBA-AMO contracted operator and place the operation of these vessels with a non-District 2, MEBA-AMO contracted operator . . . [Respondent's] ability to enforce its agreements with its contracted operators, attract qualified members and fulfill its role as bargaining agent will be undermined and irreparably harmed. . . .

24. If [Grand Bassa] is allowed to withdraw operation of its tanker vessels . . . from a District 2,

MEBA-AMO contracted operator and place the operation of these vessels with a non-District 2, MEBA-AMO contracted operator . . . the Maritime Unions having contracts with said operator will assert representations, recognition and contractual claims for licensed deck and engineer officers and jobs available on these vessels in these ratings. . . .

Further, in Joseph's affidavit in support of the above proceedings, he states Grand Bassa's breach of the agreement herein would harm:

(a) The ability of the Union [Respondent] to enforce the agreements with its contracted owners/operators will be undermined and irreparably harmed.

(b) The ability of the Union [Respondent] to fulfill its role as bargaining agent will be undermined and irreparably harmed.

(c) The Union's [Respondent's] ability to attract qualified members will be reduced since job opportunities are diminished as a result of [Grand Bassa's] willful breach of its Agreement.

As of August 15, 1980, Grand Bassa vessels formerly operated by IOMC are now being operated by Trinidad Corporation.

ANALYSIS AND CONCLUSION

Section 8(e) of the Act makes it an unfair labor practice for an employer and a union to enter into an agreement, express or implied, to cease doing business with another person. Section 8(e) provides in relevant part:

It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer . . . agrees to . . . cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforceable and void. . . .

Whether a provision in an agreement which restricts an employer's subcontracting of work, as does the disputed clause herein, is lawful depends upon whether the "Union's objective was preservation of work for . . . employees, or whether the [agreement] . . . [was] tactically calculated to satisfy union objectives elsewhere. . . . The touchstone is whether the agreement or its maintenance is addressed to the labor relations of the contracting employer *vis-a-vis* his own employees." *National Woodwork Manufacturers Association, et al. v. N.L.R.B.*, 386 U.S. 612, 644-645 (1967).

It is well established by Board and court law that contract clauses which purport to limit subcontracting to employers which are signatories to union contracts, so-called union signatories clauses, are prescribed by Section 8(e). Such clauses have been viewed as not being designed to protect the wages and job opportunities of unit employees covered by a collective-bargaining agreement between an employer and a union, but as directed at fur-

thering general union objectives and undertaking to regulate the labor policies of other employers. *Chicago Dining Room Employees, Cooks & Bartenders Union, Local 42 (Clubmen, Inc., d/b/a Gaslight Club, Palmer House and Palmer House Company; et al.)*, 248 NLRB 604 (1980); *Hotel and Restaurant Employees and Bartenders' Union, Local 531 (Angelus Auto Parts, Inc.)*, 237 NLRB 1204 (1978), *enfd.* 623 F.2d 61, 67 (9th Cir. 1980); *Heavy Highway, Building and Construction Teamsters Committee for Northern California, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; et al. (California Dump Truck Owners Association)*, 227 NLRB 269 (1976); *Danielson v. International Organization of Masters, Mates and Pilots, AFL-CIO-CLC*, 521 F.2d 747 (2d Cir. 1975).

In *Chicago Dining Room Employees, supra*, the Palmer House Company, a member of a multiemployer association, was a party to a collective-bargaining agreement with the union therein which contained a provision that provided in part (248 NLRB at 605):

If a portion of any Employer's facility is . . . leased . . . where members of the bargaining unit are employed at the time of such . . . lease . . . such [lessee] . . . shall as a condition precedent to such transaction execute this Agreement [the collective-bargaining agreement between the employer association and the union therein].

The Board concluded that such paragraph was a union signatory clause stating (248 NLRB at 607):

The effect of this language is that Palmer House is prohibited from conducting such transactions with persons who do not recognize and become bound to the observance of Respondent's [the union's] agreement; hence it is a typical "union signatory clause." The clause does not in any way limit its effect to the preservation of jobs of any unit employees that are employed in the leased portion of the hotel. Rather, it requires the lessee to become bound to the contract regardless of whether or not those unit employees lose their jobs. Thus, the provisions of [the] section . . . exceed the legitimate primary purpose of protecting unit work and are directed at the secondary purpose of furthering general union objectives, in violation of Section 8(e).

A similar finding of an unlawful union signatory clause was upheld in *Angelus Auto Parts, Inc., supra*, which involved a clause that provided in substance that, in the event the employer, a party to a collective-bargaining agreement with the union, leased out any operation covered by the agreement and the lessee used the services of the employees performing work covered by the agreement, then the agreement would be applicable to and binding upon such lessee. The Board concluded that this clause was a union signatory clause, rather than a work-preservation clause, because it did not merely require that the lessee observe the economic standards set by the union or hire the former employees, but rather required that all provisions of the agreement become binding upon the lessee. Thus, the provisions of this clause ex-

ceeded the legitimate primary purpose of protecting unit work and were directed at the secondary purpose of furthering general union objectives in violation of Section 8(e).

Turning now to the instant case, and assuming, *arguendo*, Respondent's contention that IOMC's employees were also employees of Grand Bassa (IOTC), I shall consider the applicable agreement involved herein. The agreement negotiated between Grand Bassa and Respondent provided that:

International Ocean Transport Corporation [Grand Bassa] agrees with District 2, MEBA-AMO [Respondent herein] that any operator employed by it to operate its U.S. flag ships shall have labor agreements with District 2, MEBA-AMO until June 15, 1981.

An examination of this agreement on its face establishes that it goes even further than the clauses in *Chicago Dining Room Employees* and *Angelus Auto Parts, Inc., supra*, which were found to be unlawful union signatory clauses by the Board. The clauses in both the above cases permitted subcontracting, etc., to employers which were not already signatories to the union contract, but required such employers to thereafter execute collective-bargaining agreements with the union. The agreement in the instant case goes further. It restricts Grand Bassa from subcontracting the operation of its vessels to an employer which is *not already under contract with Respondent*. A more blatant union signatory clause would be difficult to imagine.

That Respondent desired by this agreement the furtherance of general union objectives, a prohibited objective, rather than a preservation of unit work, is evidenced by the admissions of Joseph, set forth in Respondent's complaint when Respondent commenced action in the U.S. district court to compel specific performance of the agreement herein. In its verified complaint Respondent alleged:

17. Unless a Temporary Restraining Order and Preliminary Injunction are issued [Respondent] and its members will suffer substantial and irreparable injury *since the number of jobs available to these members in the District 2, MEBA-AMO Deep Sea employment pool will be permanently reduced as these jobs are prematurely eliminated*

22. If [Grand Bassa] is allowed to withdraw operation of its tanker vessels . . . from a District 2, MEBA-AMO contracted operator and place the operation of these vessels with a non-District 2, MEBA-AMO contracted operator . . . [Respondent's] *ability to enforce its agreements with its contracted operators, attract qualified members and fulfill its role as bargaining agent will be undermined and irreparably harmed*. . . .

24. If [Grand Bassa] is allowed to withdraw operation of its tanker vessels . . . from a District 2, MEBA-AMO contracted operator and place the operation of these vessels with a non-District 2, MEBA-AMO contracted operator . . . *the Maritime*

Unions having contracts with said operator will assert representations, recognition and contractual claims for licensed deck and engineer officers and jobs available on these vessels in these ratings. . . . [Emphasis supplied.]

Further in Joseph's affidavit in support of the district court action herein, he states Grand Bassa's breach of the agreement herein would harm Respondent in the following respects:

(a) The ability of the Union [Respondent] to enforce the agreements with its contracted owners/operators will be undermined and irreparably harmed.

(b) The ability of the Union [Respondent] to fulfill its role as bargaining agent will be undermined and irreparably harmed.

(c) The Union's [Respondent's] ability to attract qualified members will be reduced since job opportunities are diminished as a result of [Grand Bassa's] willful breach of its Agreements.

These admissions by Joseph in the verified complaint and affidavit establish conclusively that the agreement in issue was designed solely to promote furtherance of Respondent's general objectives. In this connection, Joseph contends the general "Deep Sea employment pool" will be reduced, its ability to enforce its bargaining agreement's with other operators and to attract qualified members will be undermined and harmed; other "Maritime Unions" having contracts with other operators will assert representational and recognition claims, thus reducing the total membership in Respondent; and Respondent's ability to enforce those bargaining agreements in effect with owner/operators will be generally undermined.

Respondent contends that the licensed deck and engineer officers were employees of IOTC and Grand Bassa because they "had the power to assign the work of performing the duties and responsibilities of licensed deck and engineer officers on the former Cities Service vessels" and "exercised such power by terminating its operating agency agreement with the labor broker, IOM [IOMC] and substituting Trinidad Corporation as the labor broker." Thus, it would appear that Respondent contends that IOMC was in effect a "manpower" type corporation, a supplier of licensed deck and engineer officers, and that IOTC and Grand Bassa were the employers of personnel supplied by IOMC.

The facts in this connection establish that, following the rescission in December 1978 between the Hooper interests and Cities Service, IOTC (Grand Bassa) and IOMC had no common ownership, officers, or directors. Indeed, IOMC as an independent corporation was free to have, and did have, agreements with other vessel owners to operate their ships. Thus, the evidence establishes that Grand Bassa and IOMC operated as totally separate and independent corporations with no common management.

The signatory to the collective-bargaining agreement with Respondent which set forth the terms and conditions of employment of the licensed deck and engineer officers was IOMC. Grand Bassa or IOTC was neither a

signatory to this agreement nor participated in any way in the negotiation of this agreement.

The facts also establish that IOMC had complete control over the essentials of the employment relationship of the licensed deck and engineer officers herein. Thus, IOMC recruited, hired, fired, negotiated wage rates for, and disciplined its employees, and settled and adjusted grievances, etc.

That IOTC participated in the meetings with IOMC or Respondent held on November 2 and December 4, 1978, and January 5, 1979, and negotiated severance pay obligations does not establish it as the employer of the licensed deck and engineer officers. IOTC was ultimately liable to IOMC, which was contractually liable to Respondent under its collective-bargaining agreement with Respondent for severance pay, and, being ultimately liable, it is understandable that IOTC would want to be present at any meeting where severance pay obligations were being discussed.

In these circumstances, I conclude that IOTC or Grand Bassa did not exercise such substantial control, if any at all, over the labor relations of IOMC or the licensed deck and engineer officers so as to render it an employer of the licensed deck and engineer officers. *Hydroscience, Inc.*, 227 NLRB 1002 (1977). Grand Bassa or IOTC had the same relationship with IOMC as the owner of an office building has to a service maintenance contractor with which it has an agreement to maintain its office buildings.

The situation in the instant case is much like that in *Connell Construction Co., Inc. v. Plumbers & Steamfitters Local Union No. 100, United Association of Journeymen & Apprentices of the Plumbing & Pipefitting Industry of the United States and Canada*, AFL-CIO, 421 U.S. 616 (1975). In *Connell*, Local 100 represented certain mechanical trades workers in the Dallas area. It entered into an agreement with Connell, a general contractor with which it did not have a collective-bargaining agreement, and which did not employ members of, or employees represented by, Local 100. Thus, Grand Bassa, like Connell, was a "stranger contractor" in that it had no collective-bargaining agreement with Respondent, nor did it employ employees represented by Respondent. The agreement in *Connell* provided, as in the instant case, that Connell would subcontract mechanical work "only to firms that are parties to an executed, current collective bargaining agreement with Local Union 100." The Supreme Court in *Connell* concluded that such agreement violated Section 8(e). In so concluding, the Supreme Court held that subcontracting agreements lawful within Section 8(e) extend "only to agreements in the context of the collective-bargaining relationships." Therefore, agreements executed with "stranger contractors" limiting those persons to whom such contractors can subcontract are unlawful.⁴

⁴ *Connell* involved an action brought by Connell alleging the agreement violated Federal antitrust laws. The Supreme Court, reversing the U.S. district court and the circuit court of appeals (5th Cir.), concluded the agreement was not exempt from Federal antitrust laws.

Similarly, in *Colorado Building & Construction Trades Council (Utilities Services Engineering, Inc.)*, 239 NLRB 253 (1978), a general contractor who did not have a collective-bargaining agreement with the union, and who did not employ employees represented by the union, was threatened with picketing by the union unless it agreed to execute an agreement which provided in substance that the general contractor would not subcontract out certain electrical work to any subcontractor which failed to pay its employees the prevailing industry wages.⁵ The Board, in holding that the union violated Section 8(b)(4)(A) by threatening to picket to obtain such agreement, concluded that since there was no collective-bargaining agreement between the union and the general contractor, nor did the general contractor employ employees represented by the union, the disputed agreement had an unlawful secondary object of aiding and assisting union members generally, and such agreement was therefore proscribed by Section 8(e).⁶

Thus, it would appear that any agreement within the meaning of Section 8(e) between the union and a "stranger contractor" would be unlawful and proscribed by Section 8(e).

The same concept was recognized in *National Woodwork, supra* at 644-645, where the Supreme Court defined the parameters for a valid work-preservation clause. The test enunciated by the Supreme Court for a valid work-preservation clause is set forth again as:

... whether, under all the surrounding circumstances, the Union's objective was preservation of work for [bargaining unit] employees, or whether the [agreement] was tactically calculated to satisfy union objectives elsewhere. . . . The touchstone is whether the agreement or its maintenance is addressed to the labor relations of the contracting employer *vis-a-vis* his own employees.

Accordingly, I conclude that the agreement executed between Respondent and Grand Bassa is a "stranger contract" and is unlawful and is proscribed by Section 8(e).

Respondent contends that Grand Bassa's arrangements with operators to operate its flagship vessels does not constitute "doing business" within the meaning of the Act since Grand Bassa's replacement of IOMC with Trinidad Corporation was the first and only time in more than 4 years that Grand Bassa had employed a different operator. I find no merit to this contention.

The Board has distinguished between a sale and a lease agreement and has held that a sale or transfer of an enterprise is generally not viewed as a business transaction within the scope of Section 8(e) since a permanent transfer takes place. However, a lease arrangement is not

comparable to a sale in that no permanent transfer takes place and thus a lease does constitute "doing business" within the meaning of the Act. *Angelus Auto Parts, Inc., supra*, and the cases cited therein at 1207. I conclude that the subcontracting arrangement in the instant case is similar to a lease arrangement. The contractor, Grand Bassa, as does the lessor, retained ownership in its vessels. What transpired was a change as to which operator would operate its vessels. I further conclude that the frequency whereby Grand Bassa might replace operators is of no significance.

Accordingly, I conclude that the subcontract by Grand Bassa to Trinidad Corporation to operate Grand Bassa's vessels constitutes "doing business" within the meaning of Section 8(e) of the Act.

Respondent further contends that the complaint allegations alleging a violation of Section 8(e) should be dismissed as falling outside the applicable 10(b) period.⁷

There is no dispute that the agreement alleged as violative of Section 8(e) in the complaint was executed on January 5, 1979, and was readopted on January 23, 1979. The charge in this case was filed on August 12, 1980, more than 6 months from the last date of the execution of the agreement herein.

General Counsel contends that the telex communication to Gillespie of Grand Bassa on August 11, and to its attorneys on August 13, advising Grand Bassa of Respondent's intention to commence legal action in connection with the alleged breach of the January 5 agreement, and the institution of subsequent legal proceedings in the U.S. district court seeking specific performance of this agreement constitute a reaffirmance of the agreement within the 10(b) period.

I find merit to General Counsel's contention. The Board has held that the threat to enforce and the institution of legal proceedings in furtherance of an agreement within the meaning of Section 8(e) constitutes "entering into" within the meaning of Section 8(e) of the Act. *Chicago Dining Room Employees, supra; Angelus Auto Parts, Inc., supra*.

Accordingly, I conclude that Respondent by its telexes on August 11 and 13, and by the institution of its legal proceedings in the U.S. district court to compel specific performance, "entered into" an agreement within the meaning of Section 8(e).

CONCLUSIONS OF LAW

1. Grand Bassa/IOTC is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Respondent is a labor organization within the meaning of Section 2(5) of the Act.

⁵ Such agreements are commonly referred to as "union standards clauses."

⁶ The Board has held that "union standards clauses" executed between a union and an employer which has a collective-bargaining relationship with the union are aimed at work preservation and are not proscribed by Sec. 8(e). *Heavy Highway, Building and Construction Teamsters Committee for Northern California, etc.; et al. (California Dump Truck Owners Association), supra; Highway Truck Drivers and Helpers, Local 107, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; et al. (S & E McCormick, Inc.)*, 159 NLRB 84 (1966).

⁷ Sec. 10(b) of the Act provides, *inter alia*:

... That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge.

3. By entering into, enforcing, and giving effect to the agreement executed on January 5 and June 13, 1979, between Grand Bassa and Respondent described herein, Respondent has entered into an agreement in violation of Section 8(e) of the Act.

4. The aforesaid unfair labor practice has a close, intimate, and substantial effect on the free flow of commerce within the meaning of Section 2(2), (6), and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in a violation of Section 8(e) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action in order to effectuate the policies of the Act.

Upon the foregoing findings of fact, analysis, and conclusions of law, upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER⁸

The Respondent, District 2, Marine Engineers Beneficial Association—Associated Maritime Officers, AFL—

⁸ In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

CIO, Brooklyn, New York, its officers, agents, and representatives, shall:

1. Cease and desist from entering into, enforcing, or giving effect to the agreement executed on January 5, and on June 13, 1979, which provides *inter alia* that: International Ocean Transport Corporation agrees with the District 2, MEBA-AMO, that any operator employed by it to operate its U.S. flagships shall have a labor agreement with District 2, MEBA-AMO, until June 15, 1981.

2. Take the following affirmative action:

(a) Post at its business offices and meetings hall copies of the attached notice marked "Appendix."⁹ Copies of said notice, on forms provided by the Regional Director for Region 29, after being duly signed by Respondent's representatives, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(b) Furnish the Regional Director for Region 29 with signed copies of the aforesaid notice for posting at Grand Bassa, should it be willing, at all places where notices to its employees are customarily posted. Notify the Regional Director for Region 29, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

⁹ In the event that this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "Posted By Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."